brought, and which it still holds. Having exchanged the bonds for the stock, can it retain the proceeds of the exchange, and assert against a purchaser of the bonds for value that though the legislature empowered it to make them, and put them upon the market, upon certain conditions, they were issued is disregard of the conditions? We think they cannot, and, therefore, that the third plea cannot be sustained.

But for the reasons given above the case must be sent back for another trial; when, doubtless, the pleadings will be changed.

JUDGMENT REVERSED, and the cause

REMITTED FOR FURTHER PROCEEDINGS.

The CHIEF JUSTICE, with MILLER and FIELD, JJ., concurred in a judgment of reversal, but said that they did not assent to all the views expressed in the preceding opinion.

WILLIAMS *v.* KIRTLAND.

1. A tax deed executed by a county auditor under a statute of Minnesota of 1866, declaring that where lands sold for taxes were not redeemed within the time allowed by law, such deed should be *primâ facie* evidence of a good and valid title in the grantee, his heirs, and assigns, did not dispense with the performance of all the requirements prescribed by law for the sale of the land. It only shifted the burden of proof of such performance from the party claiming under the deed to the party attacking it.
2. The construction of a State law upon a question affecting the titles to real property in the State by its highest court, is binding upon the Federal courts.

ERROR to the Circuit Court for the District of Minnesota.

This was an action of ejectment for the possession of certain real property, situated in the city of St. Paul, in the State of Minnesota. The declaration was in the form usual

Statement of the case.

in Minnesota. The plea was the general issue; and by consent of parties a jury was waived and the cause tried by the court. The plaintiff claimed the premises under a deed executed in 1864, by the auditor of Ramsey County of that State upon a sale for unpaid taxes.

The statute of Minnesota of March 11th, 1862, under which the sale was made, provided that certain lands sold for taxes of the year 1859, and *of previous years*, and lands upon which delinquent taxes were due on the passage of the act to any city, or to the State, might be redeemed by payment of the amount of the taxes, with interest and costs, on or before November 1st, 1862; that if any such lands remained unredeemed, or such delinquent taxes on lands remained unpaid at that time, the lands should become forfeited to the State, and that thereupon it should be the duty of the county auditor to advertise the property for sale, stating that such lands would be sold as forfeited to the State under the provisions of the act, and the time and place of sale, *which time should be the second Monday in January*, 1863.

The statute also contained provisions requiring publication of notices of the sale, prescribing the manner in which the sale should be conducted, for the issue of certificates of sale to the purchaser, and, upon the return of the certificates, for the execution and delivery to him, or his assignee, of a deed in fee simple for the premises, which should recite the sale and the fact that the property was unredeemed. And the statute declared that the deed thus executed should vest in the grantee an absolute title, both at law and in equity, except where the tax returned delinquent was actually paid; and "that any person or persons having or claiming any right, title, or interest in or to any land or premises after a sale under the provisions of this act, adverse to the title or claim of the purchaser at any such tax sale, his heirs or assigns shall within one year from the time of the recording of the tax deed for such premises commence an action for the purpose of testing the validity of such sale, or be forever barred in tne premises."

A statute of the State, passed in 1866, provides that where

lands sold for taxes were not redeemed within the time allowed by law, the deed executed by the county auditor should be *primâ facie* evidence of a good and valid title in the grantee, his heirs, and assigns.

The deed recited that the sale was made on the 11th of February, 1863, and did not recite any cause for disregarding the day designated for the sale in the statute, namely, the second Monday in January, 1863. The deed also recited that the sale was "for the sum of $337.80; being the amount of taxes for the years 1853, 1854, 1855, 1856, 1857, 1859, 1860, 1861, with interests and costs chargeable on said tract of land."

After the deed was received in evidence, the defendant, to maintain the issue on his part, produced as a witness the treasurer of Ramsey County at the time of the sale mentioned in the deed, and offered *to prove that the notice of the sale was insufficient;* but the plaintiff objected to the proof on the ground that it was *incompetent and immaterial*, and the objection was sustained by the court. The defendant excepted. The court thereupon found that the plaintiff was entitled to judgment for the possession of the premises in controversy, by virtue of the tax deed, and rendered judgment accordingly; and the defendant brought the case here on writ of error.

Messrs. J. B. Brisbin and E. C. Palmer, for the plaintiff in error; Mr. I. D. Warren, contra.

Mr. Justice FIELD delivered the opinion of the court.

We agree with counsel that the provision in the statute of March 11th, 1862, that the tax deed executed by the county auditor should vest in the grantee an absolute title, both at law and in equity, except where the tax returned delinquent was actually paid, only declared the effect of a deed such as the statute contemplated, and did not dispense with proof of compliance with the preliminary requirements of the act. The officer, in making the sale and executing the deed, acted under a special power, and, as in all such

cases, was bound to keep strictly within the limits of his authority. No attempt was made by the plaintiff to show the levy of any tax upon the property, or its non-payment, or that any sale was ever had. He relied, to supply the want of such proof, upon a provision of the statute of 1866, declaring that where lands sold for taxes were not redeemed within the time allowed by law, the deed executed by the county auditor should be *primâ facie* evidence of a good and valid title in the grantee, his heirs, and assigns.*

It is admitted that a deed executed under these circumstances would, if valid on its face, have dispensed, in the first instance, with proof of the previous proceedings, upon the performance of which a sale only could be made. But it is contended that it was essential to the admission of a tax deed, having of itself such effect as evidence, that it should appear that the lands sold for taxes had not been redeemed when the deed was executed and delivered. And it is stated that this has been expressly adjudged by the Supreme Court of Minnesota upon the construction of the provision of the statute of 1866 cited by the plaintiff.† Such is undoubtedly the case, and, had the objection been taken when the deed was offered, the deed would not have been admissible, in the absence of such proof, to establish a title in the plaintiff. But the plaintiff is precluded from availing himself of the objection here, as it was not urged in the court below, and is not covered by any of the several objections presented by him.

It may admit of much doubt, as also contended by counsel, whether the deed was not invalid on its face. The act of 1862 declares that notice of the sale should be given for the second Monday of January, 1863. The deed shows that the sale took place on the 11th of February following, and contains no recitals explaining the disregard of the day designated by the statute and the selection of a different day.

The act of 1862 also provides for sale of certain lands upon which the taxes of 1859 and of preceding years were

* General Statutes of Minnesota of 1866, chap. 11, §§ 139, 140.

† Greve *v.* Coffin, 14 Minnesota, 355.

unpaid. The deed shows that the sale was made for delinquent taxes not only of these years, but also of the subsequent years of 1860 and 1861; and counsel have not called our attention to any statute of Minnesota which authorizes a sale for the taxes of these years added to the taxes of the previous years.

But it is not necessary to express any opinion upon these objections until we have the entire statutes of the State on the subject of these tax sales before us. There is one error in the ruling of the court below which will require a reversal of the judgment. Giving to the deed full effect as *primâ facie* evidence of title, its validity was open to question by the defendant. The statute does not dispense with the performance of all the requirements of the law prescribed for the sale of the land. It only shifts the burden of proof of such compliance from the party claiming under the deed to the party attacking it. The deed itself, when admitted, creates under the statute a presumption that all essential preliminary steps in the assessment and levy of the tax and sale of the property have been complied with. This presumption the defendant desired to rebut. He offered to prove that the notice of the sale was insufficient, but the offer was rejected under the objection that the proof was incompetent and immaterial. In this the court below erred.

Some criticism was made upon the form of the offer, that it was not to prove any particular fact, but a conclusion of law. It would undoubtedly have been better for counsel to have stated the facts he desired to establish, but no objection was taken to the form of the offer; the objection was only to the competency and materiality of the proof; and it would be unjust to the defendant to deprive him in this court of the benefit of his offer on grounds not presented in the court below. That court evidently considered the right of the defendant to question the validity of the deed as lost by the operation of the 7th section of the act of 1862, which declared: "That any person or persons having or claiming any right, title, or interest in or to any land or premises after a sale under the provisions of this act, adverse to the title or

claim of the purchaser at any such tax sale, his heirs or assigns shall within one year from the time of the recording of the tax deed for such premises commence an action for the purpose of testing the validity of such sale, or be forever barred in the premises."

It is a sufficient answer to this view of the operation of this statute, that the Supreme Court of Minnesota has adjudged that the statute does not apply to cases where the owner of the property defends against a tax deed in an action of ejectment; and if it were susceptible of such application that the statute itself would be in conflict with the constitution of the State.* This construction of a State law upon a question affecting the titles to real property in the State by its highest court, is binding upon the Federal courts.

JUDGMENT REVERSED, and the cause

REMANDED FOR A NEW TRIAL.

CANAL COMPANY *v.* CLARK.

1. To entitle a name to equitable protection as a trade-mark, the right to its use must be exclusive, and not one which others may employ with as much truth as those who use it. And this is so although the use by a second producer, in describing truthfully his product, of a name or a combination of words already in use by another, may have the effect of causing the public to mistake as to the origin or ownership of the product. Purchasers though mistaken, are not in such a case deceived by false representations, and equity will not enjoin against telling the truth.
2. Hence no one can apply the name of a district of country to a well-known article of commerce, and obtain thereby such an exclusive right to the application as to prevent others inhabiting the district or dealing in similar articles coming from the district, from truthfully using the same designation.
3. Accordingly, where the coal of one person who early and long mined coal in a valley of Pennsylvania known as the Lackawanna Valley had been designated and become known as "Lackawanna coal," *Held*, that miners who came in afterwards and mined in another part of the same

* Baker *v.* Kelley, 11 Minnesota, 480.